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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/345/2024
Arising Out of
WPO/128/2024

SHOEB AHMED & ORS.
VS.
MD. YASSAR & ORS.

BEFORE :

THE HON'BLE JUSTICE JOYMALYA BAGCHI
And
THE HON'BLE JUSTICE GAURANG KANTH
Date : 26th September, 2024

Appearance :
Mr. Ramkrishna Bhattacharyya, Adv.
....for applicants

The Court :- The appeal has been preferred by a third party. No formal prayer for leave to appeal has been made. However, leave is granted to prefer the appeal.

The applicants are tenants in the premises being No.3/45, Narkeldanga Main Road, Ward No.29, Borough-III.

By the impugned order, the Hon'ble Judge directed the Executive Engineer (Civil), Building Department, Borough-III of the Kolkata Municipal Corporation to consider the representation of the petitioners and after giving reasonable

opportunity of hearing to them and other necessary parties to pass a reasoned order with regard to the complaint regarding unauthorized construction in the premises. It was also recorded, in the event the construction was in violation of the sanctioned plan or devoid of sanctioned plan, necessary steps shall be taken.

Applicants who are tenants in the premises claim they were not given notice or opportunity of hearing prior to the passing of the order. It is further argued the entire building is not an unauthorized one.

We have considered the submissions of the applicants in light of the materials on record. Hon'ble Single Judge had remitted the matter before the Executive Engineer concerned to give an opportunity of hearing to the writ petitioner and other parties and pass reasoned order with regard to the allegation of unauthorized construction. No final decision had been taken save and except observing if the construction was found to have been erected devoid of sanctioned plan or in violation of the sanctioned plan then necessary steps are to be taken but private disputes shall not be decided.

The applicants were inducted in the building after the construction had been made. First proviso to Section 400(1) of the Kolkata Municipal Corporation Act prescribes an opportunity of hearing to the person at whose instance of the construction is made prior to passing of the demolition order. It is not the applicant's case that the construction was made at their behest. As the statute does not provide for an opportunity to them, no case of breach of principles of natural justice while passing the impugned order is made out. In the event a

demolition order is passed with regard to the premises or any portion thereof it is open to the applicants to seek necessary redress in accordance with law.

With such observation, the appeal is disposed of.

(GAURANG KANTH, J.)

(JOYMALYA BAGCHI, J.)

SN.
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